

**REMARKS**

The Office Action mailed March 17, 2011 provides the examination of claims 10-12 and 17, claims 13-16 and 18-23 being withdrawn following restriction, and claims 1-9 having been canceled at the outset.

The present Amendment cancels non-elected claims 10-12 and 18-23. The remaining pending claims are amended to recite an "isolated" peptide. Support for such amendment is provided in the specification, for example at page 3, lines 4-10 of the originally filed specification.

**Rejection under 35 USC § 101**

Claims 10 and 11 are rejected under 35 USC § 101 as being directed to non-statutory subject matter. The Examiner explains that the claims as written describe a naturally occurring product, citing Surdaslal as evidence that the peptide recited is present in the venom of *C. monile*.

All of the pending claims are amended to recite that the peptide of the invention is one that has been "isolated" and thus to reflect the hand of man in the invention. Accordingly, the instant rejection is overcome and should be withdrawn.

**Rejections under 35 USC § 102**

Claims 10-12 and 17 are rejected under 35 USC § 102(b) as being anticipated by Ramu (1994) or Annadurai (2002). This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

As a threshold matter, the Examiner combines the cited references with a second reference, Surdaslal (2004), which is not prior art to the present application. Surdaslal was only received for consideration for publication on February 26, 2004 (*see* the first page of the reference), whereas the present application enjoys a priority date of February 20, 2004. Thus,

one of ordinary skill in the art would not have known that *C. monile* venom includes a peptide of any interest whatsoever at the time of filing of the present application.

As to Annadurai (2002), the reference is an abstract from a meeting proceedings. Annadurai disclose the administration of whole venom of *C. monile* to isolated whole frog heart and demonstrate that the venom has cardiotonulatory activity that is not blocked by propanolol, and that administration of the venom to rabbits causes ventricular tachycardia. Thus, Annadurai in the first instance fails to disclose anything at all about the presently claimed peptide, including whether it is present at all in the venom. Second, Annadurai suggests (by its activity of inducing ventricular tachycardia) that *C. monile* venom is unsuitable as a pharmaceutical product. Certainly the utility of the present invention as a modulator of potassium ion channel activity is not disclosed. Accordingly, Annadurai (2002) does not anticipate the present invention and the rejection over this reference should be withdrawn.

As to Ramu (1994), the disclosure of this reference is not materially different from that of Annadurai (2002). Ramu (1994) discloses fractionation of *C. monile* toxin into four parts, and administration of the fractions to mice. One fraction was toxic, one induced scratching behavior, one induced sleep, and the fourth induced a "side gait walk" and hypertensive activities. Two of the fractions were further subdivided, but the activities of the subfractions are not disclosed. The contents of the various fractions are not described.

Ramu (1994) does not disclose any isolated peptide, and the disclosure of the biological activities of the *C. monile* fractions that are described do not urge the reader to any therapeutic utility for the toxin and especially not toward any utility relating to activity as a potassium ion channel modulator. Accordingly, this reference does not anticipate the present invention and the rejection over this reference should be withdrawn.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Mark J. Nuell, Ph.D., Registration No. 36,623, at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to our Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. § 1.16 or under § 1.17; particularly, extension of time fees.

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Respectfully submitted,

By Mark J. Nuell  
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